

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
John Pierre Thibault

Case Number: 20-02890

vs.

Respondent
Fifth Third Securities, Inc.

Hearing Site: Detroit, Michigan

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant John Pierre Thibault (“Claimant”): Harris Freedman, Esq., HLBS Law, Westminster, Colorado.

For Respondent Fifth Third Securities, Inc. (“Respondent”): J. Travis Mihelick, Esq., Dinsmore & Shohl LLP, Troy, Michigan.

CASE INFORMATION

Statement of Claim filed on or about: September 1, 2020.
Claimant signed the Submission Agreement: August 31, 2020.

Statement of Answer filed on or about: December 14, 2020.
Respondent signed the Submission Agreement: December 15, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted a claim seeking expungement of customer dispute information from registration records maintained by the Central Registration Depository (“CRD”).

In the Statement of Answer, Respondent denied any and all liability but did not oppose Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Number 1734466, compensatory damages in the amount of \$1.00, and any and all other relief that the Arbitrator

deems just and equitable.

In the Statement of Answer, Respondent opposed the award of any relief to Claimant beyond expungement.

At the hearing, Claimant withdrew the request for \$1.00 in compensatory damages and for any and all other relief that the Arbitrator deems just and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On June 15, 2021, Claimant advised that the customer in Occurrence Number 1734466 (“Customer”) was served with the Statement of Claim and notice of the date and time of the expungement hearing (“Notice”). On June 21, 2021, Claimant filed an Affidavit confirming that the Customer was served with the Notice. Claimant also filed a copy of the FedEx tracking information available online for the Notice.

The Arbitrator conducted a recorded, telephonic hearing on July 29, 2021, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondent did not participate in the expungement hearing.

The Customer also did not participate in the expungement hearing. The Arbitrator found that the Customer had notice of the expungement request and hearing.

The Arbitrator reviewed Claimant’s BrokerCheck® Report. The Arbitrator noted that a prior arbitration panel or court did not previously rule on expungement of the same occurrence in the CRD.

The Arbitrator noted that the dispute related to Occurrence Number 1734466 was not settled and, therefore, there was no settlement documentation to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant’s testimony, Claimant’s BrokerCheck® Report, and Claimant’s exhibits.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement hearing, and any post-hearing submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

The Arbitrator recommends the expungement of all references to Occurrence Number 1734466 from registration records maintained by the CRD for Claimant John Pierre Thibault (CRD Number 3227041) with the understanding that, pursuant to Notice to Members 04-16, Claimant John Pierre Thibault must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 13805 of the Code of Arbitration Procedure (“Code”), the Arbitrator has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and

The claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 findings based on the following reasons:

It is not clear that the Customer intended her November 10, 2014 communication to be construed as a complaint. The Customer did not suffer a loss, the managed account did not perform poorly, and the investment was in line with the Customer's investment profile. The Customer verified that she had a "High Risk Tolerance." As the selected investment risk rate was "High Risk Tolerance," the selection was suitable for the Customer. On November 21, 2014, after completing a thorough investigation, Respondent denied the claim. The public disclosure of the Customer's allegations does not offer any public protection and has no regulatory value. If not expunged, this customer dispute will mislead any person viewing Claimant's CRD record and will not provide valuable information for knowledgeable decision making.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution Services assessed a filing fee* for each claim:

Initial Claim Filing Fee	= \$	50.00
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**The filing fee is made up of a non-refundable and a refundable portion.*

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge	= \$	150.00
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Hearing Session Fees and Assessments

The Arbitrator has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrator, including a pre-hearing conference with the Arbitrator, which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session @ \$50.00/session	= \$	50.00
Pre-Hearing Conference: February 4, 2021	1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: July 29, 2021 1 session		
<hr/> Total Hearing Session Fees	<hr/> = \$	<hr/> 100.00

The Arbitrator has assessed the total hearing session fees to Claimant.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

ARBITRATOR

Lee Hornberger

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

Arbitrator's Signature

Lee Hornberger

Lee Hornberger
Sole Public Arbitrator

08/02/2021

Signature Date

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August 02, 2021

Date of Service (For FINRA Dispute Resolution Services use only)